



Charles River Watershed Association

February 9, 2009

Philip Giudice, Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Attn: Courtney Karp

Re: 225 CMR 14.00 Renewable Energy Portfolio Standard (RPS) Class I

Dear Mr. Giudice:

The Charles River Watershed Association (CRWA) has reviewed the draft Renewable Energy Portfolio Standard RPS I, 225 CMR 14.00 regulations and submits the following comments. CRWA is a nonprofit environmental organization with over 5,000 members, which uses science, advocacy and the law to protect and restore the health, beauty and accessibility of the Charles River and its watershed. While CRWA strongly supports the development of renewable energy sources, we have a number of concerns about the siting of hydroelectric energy generation.

The over 3,000 dams in the Commonwealth have a profound impact on water quality, streamflow, fisheries and aquatic habitat. Recent Target Fish Community (TFC) analyses by MA Division of Fisheries and Wildlife and CRWA in the Charles River mainstem and tributaries and fisheries' data show that fish populations have suffered in terms of species population and diversity. Currently, 98 percent of the fish species found in the Charles are macrohabitat generalists, or warm pond-type fish, compared to river-type fish, or fluvial species, which need flowing water for at least a portion of their life cycle. Rivers across the state are evidencing serious declines in river species.

25 CMR 14.05(1)(a)6.d:

Compliance with LIHI standards and certification by LIHI will help Massachusetts develop hydropower in a more environmentally sensitive way. However, while subsection d requires that the Unit meet "appropriate and site-specific standards . . . as determined by the Department in consultation with Relevant Hydroelectric Agencies," under the LIHI certification subsection d.i., the Department "may" request further information from the Relevant Hydroelectric Agencies (RHAs) as part of its review of the applicant's SQ application. While perhaps intended to clarify the Department's authority to seek this information from the RHAs, we believe that the language should be strengthened to make it clear that RHA input must be sought as a matter of course by the Department. The requirement in subsection d.i.A that the RHA must have consulted with the owner or operator of the Unit should be stricken. While we expect that in the normal course of LIHI review RHAs will consult with Unit owners or operators, this should not be a prerequisite to the

Department's request for further information.

The language in 14.05(1)(a)6.d ii allowing the Department to overrule LIHI upon a finding of "appropriate environmental safeguards" is standardless, at odds with the "site-specific" language in 14.05(1)(a)6.d. and should require full mitigation. We note that Section 401 certification by MassDEP is independent of the determination required of the Department in subsection d. and cannot substitute for, or supplant it. However, flow and fisheries RHA recommendations should be binding on the Department.

While LIHI takes public comment, it is not a public agency. Provisions for effective public notification should be required in the regulations. Publication in the Environmental Monitor of an application for qualification as an RPS Class I Renewable Generation Unit will ensure that there is timely public review and comment. Such a publication requirement is not burdensome on the applicant.

The requirement in subsection 14.05(1)(a)6.f. that LIHI certify or deny certification within 180 days should be qualified to make it clear that an application to LIHI must be determined complete to trigger the 180-day time clock for LIHI review and decision. The regulations should also reflect that additional information requested by LIHI which is material to LIHI's decision tolls the 180-day period. Notice of the Department's review pursuant to subsection f. (and 14.05(1)(a)6.d ii) should be published in the Environmental Monitor.

25 CMR 14.06 and 14.12(2):

Public comment on a Statement of Qualification application should be provided in 14.06(2) rather than left to the Department's "sole discretion." Lastly, a Notice of Non-compliance pursuant to 14.12(2) should be published on the Department's website unless there is some extraordinary reason for omitting this and the word "may" in this section should be changed to "shall."

Thank you in advance for consideration of CRWA's comments.

Sincerely,

Margaret Van Deusen

Margaret Van Deusen
Deputy Director and General Counsel

cc: David Cash
Philip Griffiths
Kathleen Baskin